Filing For Bankruptcy

Bankauptey is a Federal Court procedure. When a person or company cannot pay his creditors, he asks the Court to discharge his debts or rearrange his payments to creditors.

Before filing a bankruptcy petition, you should give it careful consideration. Filing a bankruptcy petition normally has an adverse effect on your crediL

There are several kinds of bankruptcy, One is a Chapter 7, or straight bankruptcy. In a Chapter 7 bankruptcy, generally all debts may be cancelled. Another kind of bankruptcy is a Chapter 13, formerly called a 'q, Vage Earners" plan. In this kind of bankruptcy, debts are repaid over a three-year period. The Court must approve the repayment plan and it is administered by a Trustee. A further kind of bankruptcy temporarily available is Chapter 12. It is similar to Chapter 13 but is specifically designed for family farmers.

Bankruptcy cases begin when a petition is filed in Federal CourL The petition lists the individual's assets as well as his debts and to whom these debts are owed. These petitions can be preprinted forms and must be completed, signed and filed with the Federal Court along with appropriate filing fees.

North Carolina is divided into three bankruptcy districts ' which administer the bankruptcy cases. You must file for bankruptcy in the district where you live. In all bankruptcy cases, the individual filing the bankruptcy petition is called a debtor and the person or company to whom the debtor owes money is called a creditor.

During the bankruptcy proceeding, the creditors cannot attempt to collect their debts or recover their collateral unless they have the permission of the Bankruptcy Court,

Generally, the filing of a bankruptcy petition is reported on your credit record for at least seven years.

There is another form of bankruptcy known as a Chapter 11, or "Reorganization." The debtor (which is usually a company) continues to operate under the supervision of the Bankruptcy Court. Because Chapter 11 bankruptcy cases are so complex, and because consumers rarely use it, Chapter 11 bankruptcy will not be discussed in this pamphlet.

Chapter 7--

Straight Bankruptcy

In Chapter 7, or straight bankruptcy, the person or company is unable to repay his debts at all and most if not all debts are cancelled. Therefore, to pay creditors, the debtor's nonexempt property is sold by an appointed Trustee who payscreditors with the money from the sale of the debtor's assets. Most debts left over are discharged or cancelted at the conclusion of the case.

However, for individuals, much of their property 'may be exempt from the Trnstee's power of sale. "Exempt property," therefore, is protected from your creditors. A certain dollar value of a car, a home, household furnishings, clothing and tools of trade is exempt.

As in the pasL when the bankruptcy case is over (often in a few months) the debtor receives a discharge canalling all debts listed on his petition.

The debtor has several responsibilities in addition to completing his bankruptcy petition by listing all proper~ and debts owed to his creditors. He must attend required hearings and cooperate with the Trustee in administering the estate.

The Trustee's main job is to gather all non-exempt property and sell it to pay creditors. Not only does the Trustee have the power to take possession of non-exempt property, he may also recover money or property transferred to creditors, relatives or friendsbefore the debtor filed the bankruptcy petition.

Most **straight bankruptcy** petitions are called "no-asset" cases because there is no property, other than the exempt property, to sell to generate funds for creditors, Generally, once the Trustee determines that the case is a no-asset case, the proceeding will be closed shortly after the debtor is granted his discharge.

A creditor is a **secured creditor** if the debtor has pledged property as collatera L For example, if you purchase furnitu re or a home th rough monthly installments, the item being purchased is security or collateral for the installments yet to be paid.

The lien held by the secured creditor on the property remains intact throughout the proceeding even though the money obligation is eventually cancelled. If the secured claim is not paid or arrangements not made to pay the debt, the secured creditor may bring an action to repossess the collateral.

An unsecured creditor is one whose claim is not secured by any property. An example would be an open account with a store, a bank card account or medical bills.

At the bankruptcy proceeding not all claims are discharged. Exceptions include money owed the government for taxes, fraudulent debts, child support, alimony or governmental fines.

A Bankruptcy Judge presides throughout the bankruptcy proceeding. The judge makes rulings on disputed issues. Forexample, the Judge would determine whether a claim is secured or unsecured or whether a creditor is entitled to repossess its collateral. However. most straight bankruptcy cases are handled routinely and such questions rarely arise.

When someone files for bankruptcy, the Clerk of Court schedules a meeting of creditors and a discharge hearing. The debtor and all creditors are notified of the meeting of creditors, The Trustee is appointed to administer the case.

The meeting of creditors is usually held at a nead~y state or federal courthouse. The Trustee reviews the debtor's petition and asks questions about his assets. The creditors are also allowid to ask the debtor questions.

After the meeting of creditors, the Trustee arranges the sale of any property not exempted. After the sales, he prepares a report to the Court, and if the Court approves, he distributes funds to the creditors.

A debtor cannot file for straight bankruptcy if he has previously completed a Chapter 7 straight bankruptcy within the preceding sixyears.

Chapter 13, Formerly Known As "Wage Earners" Plan

Rather than seeking an immediate discharge of debts, th(Chapter 13 debtor submits part of his income to a Chapter 1 Trustee. The Trustee distributes these funds to the creditor., over a period of time until the debts are satisfied according tc the plan or the plan terminates.

During the Chapter 13 proceeding, the creditors cannot attempt to collect their debts unless with the permission of thc Bankruptcy Court. In some cases, people choose to file Chapter 13 rather than a Chapter 7 because they can protec~ moreof their property under Chapter 1:3.

The Chapter 13 petition inducles a statement of the debtor~ income and plan to pay the creditors from the money sent exert month to the Chapter 13 Trustee. The plan must meet certair guidelines required by law and be approved by the Bankruptc~ Court.

If you file a Chapter 13 bankruptcy, a Trustee will be appointed by the Court to administer your case. The Trustee reviews you r petition and may interview you and recommerd modifications in order to comply with the bankruptcy laws and local guidelines.

The creditors listed on your petition are notified that y~ have filed for a Chapter 13 bankruptcy. They are also imtruct~

to file a claim. A secured creditor must file a claim before the meeUng of creditors in order to ensure the classification as

An unsecured creditor must file within sbt months of the time you filed the bankruptcy petition. The claim is on a form provided by the Court and mailed to your creditors with the notice of the meeting of creditors.

The Bankruptcy Judge can solve any problems which may ame while the case is pending. Fro' e~mple, a o*edRm' may ask for ~ to foreciosc on property pkdged on a debt which isnot being paid through the Chapter 13 plan.

When a petition is flied, the Clerk of Court schedules a meeting of creditors which the debtor must attend. There, the Trustee will review the petition and explain the plan to the creditors attending. The creditors may inquire abeut the location ~ their co[bter'al or how thair claim is to be paid wi~in the Chapter 13 plan.

C, enerally, the priority of disbursements from the Chapter 13 Trustee to the creditors is as follows: first, administrative costs, including a portion of reasonable attorney's fees, are paid, then priority claims such as taxes along with secured claims. Unsecured claims are paid last.

The plan is sent to the Judge to review and contirm. The Trustee then disburses funds each month to the debtor's creditors as sotout in the plan.

If the debtor fails to make his monthly payments to the Chapter 13 Trustee, the proceeding may be dismissed by the Court upon the request of the Trustee or any creditor. Also, while the Chapter]3 plan is pending, the debtor may convert to a Chapter 7 straight bankruptcy.

When the Chapter 13 plan is successfully completed, the debts listed on the original petition are discharged. As in the Chapter T bankruptcy, certain long term debts, taxes, child support, maintenance and alimony are not dischargeable in Chapter 13.

Chapter 12--
Family Fainter Bankruptcy

Specific discussion of this type of bankruptcy is beyond the scope of this pamphlet. Individuals or corporations that receive at bast 50 percent of their gross income over the last year from farming operations should be aware of this However, Chapter 12 is scheduled to be repealed on Oct. 1, 1993.

This is the Law

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